

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

-----  
TEXTILE LABOUR ASSOCIATION

Versus

GULAMALI GULAM RASUL

-----  
Appearance:

MR DS VASAVADA for Petitioner  
NOTICE SERVED BY DS for Respondent No. 1, 3, 4  
NANAVATI & NANAVATI for Respondent No. 2

-----  
CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2000

ORAL JUDGEMENT

Learned advocate Mr. D.S. Vasavada is appearing  
on behalf of the petitioner and learned advocate Mr.  
Shukla for Nanavati and Nanavati is appearing on behalf

of the Respondent Mills. Rule. Learned advocate appearing on behalf of the Respondents waives service of Rule and with the consent of all the learned advocates, the matter is being taken up for final hearing today and the same has been decided finally. In the present petition, the order passed by the Industrial Court in Review Application No.8 of 99 at Exhibit 7 dated 12th January, 2000 is challenged by the petitioner association.

2. The brief facts of the present petition is that the petitioner Union is a Registered Trade Union under the provisions of the Trade Unions Act, 1926 and it is also registered as representative union under the provisions contained in the Bombay Industrial Relations Act, 1946. The Respondent No.1 filed an application under the BIR Act, 1946. The application was filed by Respondent No.1 to obtain the declaration regarding illegal change. At that time, the petitioner was not aware about filing of such an application. Thereafter, the petitioner was having information that such application was filed for obtaining declaration regarding the illegal change against the respondent mills, which application was numbered 151/99 and 156/99. The Respondent No.1 has also filed application at Exhibit 2 and some interim directions were sought by the Respondent No.1 against Respondent No.2. The Labour Court has allowed the application at Exhibit 2 filed in BIR application No.151 of 99. The copy of such an order was not in possession of the petitioner. In short, in both the BIR applications No.151 of 99 and 156 of 99, the Labour Court has passed an order vide Exhibit 2, which order has been challenged by the Respondent No.2 mills by preferring a Revision Application before the Industrial Court under Section 85 of BIR Act, 1946. The said Revision Application No.26 of 99 was allowed by the Industrial Court. Even then the petitioner was not aware about the result of such Revision Application. The petitioner also pointed out that the Respondent Mills Company acted in violation of the registered agreement entered into between the representative union and the Respondent No.2. However, the Respondent No.1 filed a Review Application No.8 of 99 before the Industrial Court for reviewing its decision under Section 95 of the BIR Act which empowers the Industrial Court to review its own decision. Therefore, the petitioner has submitted one application at Exhibit 7 in Review Application No.8 of 99 and requested the Industrial Court to implead the petitioner as a party to the said proceedings on the ground that the petitioner is a representative union under the provisions of the BIR Act, 1946 and the

petitioner union can act and appear in any proceeding under the BIR Act, 1946. However, the Industrial Court has rejected the Application submitted by the petitioner vide Exhibit 7 only on the ground that in earlier proceedings, the petitioner association was not joined as a party and therefore the petitioner association have no right to be impleaded as a party in the Review proceedings. Before the Industrial Court, the Exhibit 7 application which was filed by the petitioner was not objected by the Respondent No.1 but the same was objected by Respondent No.2 Mills Company. Though Respondent Mills Company has not filed any reply against the Exhibit 7 application which was filed by the petitioner, the Industrial Court has considered the contention of both the respective parties and ultimately come to the conclusion that the petitioner association has initially failed to defend the case of workmen in original proceedings and therefore only on that ground the application filed by the petitioner vide Exhibit 7 has been rejected.

3. The Industrial Court has not considered the provisions of Section 27A of BIR Act wherein a representative union have right to appear in any proceedings before the Labour Court under the provisions of BIR Act as a representative union. This aspect has not been considered properly by the Industrial Court. Not only that, but the objection which has been raised by Respondent No.2 Mills Company against the petitioner is not tenable considering the provisions of BIR Act, 1946 keeping in mind the fact that undoubtedly the petitioner association is a representative union recognised and registered under the provisions of BIR Act, 1946. Therefore, the reasons given by the Industrial Court not to allow the petitioner association as a party in the review proceedings is not correct and contrary to the scheme of Bombay Industrial Relations Act, 1946. Therefore, considering the provisions of Bombay Industrial Relations Act the petitioner association, as a representative union, have right to appear in any proceedings under the provisions of BIR Act, 1946 as held by the Apex Court in case of Santuram Khadki vs. Khimatrai Processors reported in AIR 1978 SC Page 202.

4. Considering these various provisions of BIR Act and provisions of Section 27A with the decision of the Apex Court in case of Khimatrai Printers Processors and another decision of Apex Court in case of Girija Shankar vs. Spinning and Weaving Mills reported in 22 FJR Page 11 according to my opinion, the view taken by the Industrial Court in Review Application No.8 of 99 dated

12th January, 2000 is contrary to the scheme of BIR Act, 1946 and therefore the said order is required to be set aside and the same is hereby set aside. It is directed to the Industrial Court to allow to join and implead the petitioner as a party in the pending proceedings before the Industrial Court in Review Application No.8 of 99. In view of the said observations and directions, the present petition is allowed. Rule made absolute.

( H.K. RATHOD, J. )

hki